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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Connecticut Department of Public)	
Utility Control Petition for Rulemaking)	
to Amend the Commission's)	RM No. 9258
Rule Prohibiting Technology-Specific)	
Or Service-Specific Area Code Overlays)	
)	
Massachusetts Department of)	
Telecommunications and Energy Petition)	
for Waiver to Implement a)	NSD File No. L-99-17
Technology-Specific Overlay in the)	
508, 617, 781, and 978 Area Codes)	
)	
California Public Utilities Commission)	
and the People)	
of the State of California Petition for)	
Waiver to)	NSD File No. L-99-36
Implement a Technology-Specific or)	
Service-Specific Area Code)	

COMMENTS OF TIME WARNER TELECOM

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COMMENTS OF TIME WARNER TELECOM

Time Warner Telecom Holdings Inc. d/b/a Time Warner Telecom ("TWTC"), by its attorneys, hereby submits these comments in response to the Notice of Proposed Rulemaking ("Notice") in the above captioned proceeding.

I. INTRODUCTION AND SUMMARY

Telephone numbers are a vital resource for most telecommunications carriers. The inefficiencies in the present numbering allocation mechanisms, which threaten the very future of the North American Numbering Plan ("NANP"), portend serious

consequences. It is therefore essential that all carriers utilize these resources more efficiently.

Numbering resources are most strained in areas where competitive entry is most concentrated. The Commission should therefore focus the reforms adopted in this proceeding on ensuring that carriers use numbers more efficiently in areas subject to competition. The most effective means of achieving this goal is to require thousands-block pooling and to encourage rate center consolidation in the top 100 MSAs as well as any other areas that become subject to local number portability ("LNP") requirements. In addition, the Commission should require the NANP Administrator ("NANPA") to implement and enforce the number pooling guidelines. These guidelines include requirements for reporting, usage, and reclamation that address the concerns expressed in the Notice regarding the current administrative and reporting requirements. The number pooling guidelines should therefore be adequate to address the core concerns that gave rise to this proceeding.

At the same time, the existing numbering administration and reporting regimes (e.g., the COCG, COCUS, etc.) should remain in force without significant modification where pooling has not been implemented. The existing regime, while not perfect, is being revised to address many of the concerns raised in the Notice, and it should be adequate so long as carriers are required to comply with them. The Commission should therefore focus on ensuring

that the existing administrative and reporting scheme is enforced.

In the event that the Commission decides that it must reform the existing reporting and administrative regime, it should focus on implementing utilization benchmarks and revised reporting requirements. As to benchmarks, the Commission should (1) delegate to the NANC the job of establishing benchmarks that are consistent with current usage levels; (2) allow for higher usage benchmarks in jeopardy areas; (3) ensure that benchmarks take into account the different status of established carriers and new entrants; and (4) require that benchmarks be set on a rate center basis. As to reporting, the Commission should direct the NANC to devise and the NANPA to administer revised reporting requirements that (1) require quarterly reporting for the top 100 MSAs (unless the reporting requirements in the pooling guidelines apply), and implement reporting on a semi-annual or annual basis in other areas; (2) allow reporting to be adjusted to account for jeopardy situations; and (3) require audits only "for cause."

Finally, the Commission should not require carriers to pay for numbers. Such an approach is unnecessary given the adequacy of the reforms discussed herein. Furthermore, there is a material possibility that incumbent LECs would "game" a market-based process to engage in predatory behavior.

II. THE COMMISSION SHOULD ADOPT NATIONAL ADMINISTRATIVE MEASURES THAT ARE FLEXIBLE AND THAT, WHEREVER POSSIBLE, LEAVE THE DEVELOPMENT, ADMINISTRATION, AND ENFORCEMENT OF DETAILED RULES TO THE NANC AND THE NANPA.

In the Notice, the Commission questions whether the industry can successfully police itself in the allocation of numbers. See Notice at ¶ 35. This is a valid concern. Although all carriers would bear the cost of replacing the NANP, the current system does not force carriers to absorb all of the costs associated with the inefficient use of numbers. These costs include not just the costs carriers would themselves incur to replace the NANP but also the broader societal costs associated with replacement. The industry is therefore left with a classic case of uncaptured negative externalities. Regulatory intervention is therefore appropriate.

The most important role the Commission can play is to establish broad guidelines, ensure that those guidelines as well as specific rules are enforced, and function as a forum for appeals of enforcement decisions. The NANC and the industry standards-setting organizations can and should be relied upon to establish the details of reform consistent with FCC guidelines. The NANPA can in most cases be relied upon to implement and enforce those specific rules. While there has been some question (as in the case of NXX requisitions) as to whether the NANPA has been an adequate enforcement body, this should not continue to be a problem if the Commission makes it clear that the NANPA is the

entity that must implement and enforce the numbering resource rules, and that its decisions may be appealed on an expedited basis to the Commission. As discussed more fully in subsequent sections, there may be some situations in which the Commissioner must intervene to enforce guidelines directly.

There can be no question that the Commission has the authority to make such a delegation. Section 251(e)(1) states that "The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis." 47 U.S.C. § 251(e)(1). Moreover, while the statute grants to the Commission "exclusive jurisdiction" over the portions of the NANP that pertain to the U.S., Section 251(e)(1) goes on to state that, "Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction." Id. Congress therefore mandated that the Commission delegate to appropriate industry groups any part of its jurisdiction over the NANP. Furthermore, the rules established by the industry can be implemented by the NANPA or other appropriate body, which qualifies as an "impartial entity" chosen to "administer telecommunications numbering" and to make numbers available on an "equitable basis."

III. THE COMMISSION MUST MANDATE THOUSANDS-BLOCK POOLING AND ENCOURAGE RATE CENTER CONSOLIDATION.

The most important steps the Commission can take to preserve the NANP in this proceeding are to mandate compliance with thousands-block pooling and to encourage states to adopt rate center consolidation. These two steps will alleviate much of the strain that the current system is under.

A. The Commission Should Mandate Thousands-Block Number Pooling In Those Markets Where Number Portability Obligations Are In Effect.

One of the most valuable tools for optimizing number resource efficiency is the implementation of thousands-block number pooling. Number pooling eliminates the need for the assignment of a full NXX code to each carrier. Number pooling increases the efficient utilization of telephone numbers by reducing the amount of numbers that can become stranded with a particular carrier. Rather than requiring a carrier to take a minimum of 10,000 numbers per rate center, number pooling would reduce that figure by 90 percent, to a minimum of 1,000 numbers per rate center. Thus, the Commission correctly concludes that requiring carriers to utilize thousands-block pooling in these markets "is essential to extending the life of the NANP." See Notice at ¶ 138.

In 1996, Congress ordered the implementation of number portability to eliminate a barrier to competition between incumbents and competitive carriers. See 47 U.S.C. § 251(b)(2).

The availability of number pooling is a byproduct of the technology that was deployed to meet this statutory requirement. The Commission, however, should not confuse the two, nor should it order carriers to deploy expensive LNP capability for the purpose of implementing number pooling.

Under the Commission's rules, a carrier must deploy LNP technology in the top 100 MSAs in those switches for which a request has been made by another carrier. See 47 C.F.R. § 52.23(b)(1). The Commission seeks comment on whether other entities should be capable of requesting LNP technology for number pooling purposes and whether it should be deployed outside the largest markets. See Notice at ¶ 145.

As an initial matter, most of the areas presently facing a numbering crisis are the same top 100 MSA markets where LNP is being implemented. Imposing expensive LNP obligations in areas that are outside the largest 100 MSAs and in which no carrier request has triggered the LNP requirement would seem to offer little improvement in numbering resource optimization. Number pooling in many of these smaller areas is therefore a solution in search of a problem. Moreover, because the benefits of number pooling are realized in those markets where there are multiple competing carriers, the Commission can rely on its LNP implementation rules for the appropriate timing of thousands-block pooling. See id. at ¶ 149.

Thus, when a competitive carrier enters a new market, it will request the incumbent to deploy LNP technology. At that time (in a top 100 MSA as well as other areas in which LNP is requested in the future), pooling should also be required -- after competitive carriers enter the market, once LNP has been deployed in the particular switch. The Commission should also delegate to NANC the task of devising a timetable for implementing thousands-block pooling after the LNP obligations have been triggered.

In addition, all carriers subject to the thousands-block pooling obligation must be required to comply with the industry-established pooling guidelines in addition to the current Central Office Code Utilization Survey ("COCUS") and Central Office Code Guidelines ("COCG"). The pooling guidelines include reclamation rules that define the conditions under which underutilized blocks must be returned both when pooling goes into effect (e.g., in jeopardy situations). The industry guidelines also contain protections against intentional contamination of thousands-blocks. Finally, they also include reporting requirements.¹ These rules should therefore diminish substantially the opportunity for carriers to act on their inefficient incentives to stockpile numbers.

¹ See Thousands Block (NXX-X) Pooling Administration Guidelines, Draft (INC 99-0127-023) at § 6.0 (reporting), § 8.1 (reclamation and contamination).

The Commission should leave the administration of the pooling implementation and guidelines to the NANPA or another neutral third party. The Commission must, however, ensure that carriers comply with all relevant deadlines and guidelines. To the extent that a carrier resists cooperating with the pooling administrator, the administrator must be given the authority to deny the carrier in question access to numbers, and affected carriers must be able to appeal decisions to the Commission. There are likely to be some instances, however, in which denying access to numbers is an inappropriate penalty for a carrier's failure to comply with pooling requirements. The Commission must be able to intervene in these cases to ensure enforcement, and it should study the manner in which this can be accomplished most efficiently. It should be noted that the Administrative Procedure Act ("APA") may require that the industry guidelines be codified in some form in the Commission's rules before the Commission may enforce them.²

In addition to diminishing the opportunity for carriers to act on their inefficient incentives, thousands-block pooling will diminish the underlying incentives themselves. First, thousands-

² The codification of the industry rules must still preserve for the industry standards-setting bodies and the NANC the flexibility to modify requirements on a going-forward basis. Such modifications could then be subsequently codified to the extent necessary to permit the Commission to enforce them.

block pooling will free up large blocks of numbers that are currently held by carriers but unused. To the extent that the incentive to stockpile numbers increases as the supply decreases, thousands-block pooling will therefore diminish the urgency carriers may feel to collect as many numbers as possible.

Second, some carriers have stockpiled NXX codes in the past because they have feared that they could not obtain numbers for new customers quickly enough. In order to obtain a block of ten thousand numbers, a carrier must wait 66 days while the new NXX is introduced into the LERG. See Notice at n.147. But a carrier can normally obtain a thousands-blocks in about two weeks. In this regard as well, therefore, some of the urgency that causes cautious carriers to warehouse NXXs should be eliminated.

In sum, mandating thousands-block pooling in the top 100 MSAs will go a long way to addressing the concerns that gave rise to the Notice. It will increase the availability of numbers in just the areas where numbers are most likely to be exhausted. By requiring compliance with the industry pooling guidelines, the Commission will diminish carriers' opportunity to act on their inefficient incentives. Finally, thousands-block pooling should even diminish the underlying inefficient incentives.

B. The Commission Should Encourage Rate Center Consolidation.

The promotion of rate center consolidation is at least as important as implementing thousands-block pooling. The

requirement that new entrants conform their number utilization to the outdated rate center boundaries of the ILECs is one of the most glaring examples of inefficiency in the current system. Thus, the Commission has correctly concluded that "rate center consolidation [is] a vitally important long-term measure to optimize the utilization of numbering resources . . . [that] should be implemented to the greatest extent possible." See id. at ¶ 118.

To provide competitive local service, new entrants must request from the numbering administrator a unique NXX code for each rate center in which they offer service. Nationwide, there are over 19,000 rate centers. There also tends to be a disproportionate number of rate centers in just the densely populated areas where competitive entry is most concentrated. For instance, before taking steps to reduce the number of rate centers, San Antonio, Texas had 29 rate centers.³ Every carrier offering local service throughout that city, both incumbents and new entrants alike, was required to request at least 290,000 numbers, regardless of the number of subscriber lines it may have served.

³ See Number Resource Optimization Working Group Modified Report to the North American Numbering Council on Number Optimization Methods, at 1.5, n.3 (Oct. 20, 1998) ("NANC Report").

By consolidating the number of rate centers in a geographic area, all carriers would need exponentially fewer NXX codes to offer the same service to their customers. San Antonio, Texas was able to eliminate 96.5 percent of the regulatory driven demand for telephone numbers on a going-forward basis by reducing the number of rate centers from 29 to 1. When rate centers are consolidated, a carrier's allocation of numbers can be utilized over a larger geographic area, thereby more efficiently distributing its existing numbering resources. Thus, as the Commission correctly concluded in the Notice, a policy encouraging states to invoke their existing authority to order rate center consolidation would be a useful measure to address numbering exhaust. See Notice at ¶ 118.

The current rate center boundaries are an artifact of an antiquated regulatory construct to preserve toll revenues. This policy must be reexamined in light of the current numbering crisis. Although consolidation may seem like an obvious solution, the Commission properly notes that there may be some "disruptive impacts" resulting from rate center consolidation, including possible decreases in carriers' local revenue as a result of increased local calling scopes as well as increased customer confusion. See id. at ¶ 114. TWTC does not mean to disregard these concerns, which are properly before state commissions. Rate center consolidation, however, has proven to

be a workable and effective solution. See NANC Report at §§ 1.0-2.0.

Many of the concerns raised by localities and incumbents over the consolidation of rate centers are based on the effect that consolidation would have on rates for local service. These concerns call into question the entire cross-subsidization scheme upon which rate centers are founded. With technological developments that have made distance-sensitive pricing on the wireline network largely unsustainable, increased charges in local service should be minimal.⁴ A recent analysis of the current numbering crisis concluded that

[f]undamental changes should be made in the granularity with which individual rating areas (exchanges or rate centers) are presently defined. A consequence of [rate center consolidation] would likely be an expansion of certain local calling areas and/or the elimination of some existing distance sensitive charges. These types of local pricing revisions are, however, fully justified by the cost structure of modern telecommunications networks, and are long overdue for reasons unrelated to numbering issues.

See Where Have All The Numbers Gone at 26-27.

⁴ When compared to the financial and societal cost of exhausting the NANP, the cost of consolidating rate centers seems even less significant. See "Where Have All the Numbers Gone; Long-term Area Code Relief Policies and the Need for Short-term Reform," Economics and Technology, Inc., March 1998, at 27 (1998) ("Expansion of calling areas and elimination of distance-based charges may have small negative revenue impacts on the incumbent LEC, but these pale in magnitude to the huge tangible and intangible costs associated with the introduction of new area codes.") ("Where Have All The Numbers Gone").

Indeed, consolidation of rate centers need not have pricing consequences. In Texas, consolidation of 108 rate centers in the five largest cities to 31 rate centers was done "without affecting exchange calling scopes and [without] increas[ing] rates or creat[ing] customer confusion." See NANC Report at § 1.1. Also, in many areas where extensions of local calling areas are implemented, such as in Texas, the revenue consequences to incumbents (not to mention the actual cost consequences) could be quite small if there was not previously a significant amount of inter-rate center traffic. One study shows that the elimination of all toll calling in Delaware would only require a \$0.71 increase in local monthly rates per residential line. See Where Have All The Numbers Gone at 27 n.33. Because the potential benefits of rate center consolidation for numbering optimization are significant, and the attendant costs should be minimal, the Commission should work with the states to examine and implement rate center consolidation before ordering more onerous optimization measures.

IV. THE COMMISSION SHOULD ENSURE THAT THE COCUS AND COCG REQUIREMENTS ARE ENFORCED, AND IT NEED NOT MODIFY THOSE REQUIREMENTS

The areas that are not subject to LNP obligations experience far less demand for numbers than areas subject to LNP requirements. There is therefore less urgency in addressing number exhaust in these areas. Furthermore, the current

reporting and administrative procedures are currently being reformed to address many of the weaknesses identified in the Notice. However, the changes initiated by the industry cannot address the most glaring problem with the current regime: that the guidelines are not always followed by carriers using numbers. The most prudent approach for the Commission is therefore to defer changing the existing administrative and reporting requirements in the COCUS and the COCG but to ensure that the existing requirements are enforced.

The Commission should address enforcement in the first instance by empowering the NANPA to deny access to NXXs to any carrier that fails to comply with the existing rules. See Notice at ¶ 92. The Commission must also encourage the NANPA to exercise its existing reclamation authority more consistently. Again, any NANPA decision in this regard should be subject to expedited appeal to the Commission. See id. at ¶ 93. As mentioned above in the discussion of pooling, it may be necessary in some cases for the Commission to take direct enforcement action against carriers that fail to comply with COCUS and COCG. As in pooling, the Commission must make sure that it complies with any relevant APA requirements in a manner that preserves the industry standard-setting bodies' and the NANC's flexibility to adapt requirements on a going-forward basis.

It should be noted that there is one area in which TWTC agrees that the existing rules should be reformed in non-LNP

areas. As the Commission observes in the Notice, a uniform set of definitions is essential to the rational administration of numbering resources. See id. at ¶ 39. Therefore, the NANPA should be required to use the definitions on which Final Closure has been reached by the Industry Numbering Committee.⁵ The Commission need take no further action in the non-LNP areas.

V. IF THE COMMISSION INSISTS UPON MODIFYING COCUS AND COCG, IT SHOULD FOCUS ON ESTABLISHING EFFICIENT UTILIZATION BENCHMARKS AND REPORTING REQUIREMENTS

As discussed, the Commission should implement number pooling and encourage rate center consolidation in areas where LNP applies, and should make sure that COCUS and COCG are enforced in non-LNP areas. However, to the extent that it decides to rely on utilization benchmarks and reporting along the lines described in Section IV of the Notice, the Commission should be guided by the following principles.

A. Utilization Benchmarks.

First, carriers should be required to verify minimum utilization thresholds of existing NXX codes before they can be assigned additional codes. See Notice at ¶ 63. Rather than establish a specific utilization threshold at this time, however, the Commission should delegate authority to the NANC to closely examine current utilization data and implement an initial

⁵ See, e.g., Industry Numbering Committee (INC) Consolidated Glossary, INC 98-0703-022.

threshold that is reasonably consistent with present utilization levels.⁶ Over time, utilization thresholds should be adjusted upward to account for the increased efficiencies that will be realized as a result of this proceeding.

Utilization thresholds that are ultimately adopted should be generally consistent throughout the nation. Specific exceptions, however, are appropriate in some cases. For instance, in NPAs that have been declared in jeopardy of number exhaust, states should be permitted to work with the NANPA to develop utilization levels that reflect the special circumstances of the NPA. Additionally, in areas that are LNP-capable and in which thousand-block number pooling has been implemented, higher utilization benchmarks may be more appropriate. Of course, where higher utilization thresholds are implemented, a carrier with demonstrated need cannot be made to wait for additional codes. Similarly, in those areas without number pooling, additional NXX codes, in 10,000-blocks, could take considerably longer to obtain from the NANPA. Thus, lower utilization thresholds may be warranted. For an initial period of time until thousands-block pooling can be implemented and the expected improvements in

⁶ If the Commission believes that immediate implementation of the utilization benchmark approach is necessary, then there should be a minimum 1-2 year "grace period" for meeting the established thresholds.

utilization realized, benchmarks for most major markets should remain at current levels.

Consistent with notions of regulatory flexibility, utilization benchmarks must also account for the difference between established carriers and new entrants. A new entrant will, by definition, not have the same utilization levels as an incumbent carrier. A carrier that enters a particular area for the first time should therefore be given a 4-6 year period to achieve the same utilization threshold as established carriers.

Furthermore, calculation of a carrier's utilization should be competitively neutral. Presently, a carrier can obtain an initial code by demonstrating that "a need exists due to routing, billing, regulatory or tariff requirements." Id. at ¶ 55. Also, a carrier must demonstrate to the NANPA that it is licensed or certified to provide service in the area for which it is requesting the code. These requirements adequately prevent carriers from obtaining initial codes before a need actually exists, and the Commission should not impose more stringent requirements. Adding to these requirements would almost certainly be costly for new entrants and perhaps delay emerging competition.

Utilization thresholds should also be calculated on a rate-center basis, because this approach accurately tracks a carrier's use of its numbering resources. That is, carriers should not be able to rely on the fact that they may have high utilization

levels in one rate center as a basis for demanding a growth code in another rate center.⁷ Relatedly, it would be inefficient to give carriers the option of excluding newly acquired and activated NXX codes from the utilization calculation when requesting additional codes. These are numbers a carrier has to offer its customers, and they should be fully utilized before a carrier can request more resources. The overall utilization rate in a particular rate center should drive the carrier's need for additional codes. With these general principles in mind, maintaining some flexibility is necessary to allow a carrier the opportunity to demonstrate, for example, that its growth is so great as to necessitate the assigning of additional codes despite low utilization of an existing code.

Finally, utilization thresholds must be enforced by the NANPA, with right to appeal the NANPA's decisions to the Commission if necessary. If an entity meets or exceeds the established threshold, requests for additional numbers must be automatically granted. Unreasonable delay, especially in markets where numbers are distributed in thousands-blocks, could adversely affect competition between carriers. If a carrier is below the prescribed benchmark when it requests additional

⁷ A carrier expanding its footprint into a new rate center is actually acquiring an initial code, not a growth code. Thus, minimum utilization threshold requirements, if adopted, should, not be applicable for such initial codes.

numbers, but within a reasonable range, it should be allowed to "show cause" as to why the request should nonetheless be granted. Any request falling below the "show cause" range should not be granted.

B. Reporting Requirements.

If the current NANC system for forecast and utilization data based on COCUS⁸ is to be reformed, the reform must be conducted in a way that minimizes the costs imposed on carriers. Thus, reform should be based on a flexible system that is focused both on gathering data to address number exhaust and on keeping reporting costs low.

The Commission should adopt flexible guidelines, refer these guidelines to NANC for further development, and allow NANPA to implement and oversee an improved reporting and accounting system based on the FCC's standards. Adopting flexible guidelines would permit NANC to establish a reporting system that can vary according to the stages of NPA exhaust across the country. Furthermore, giving NANPA authority to oversee the reporting system may alleviate some carriers' concerns about preserving the

⁸ COCUS is used by NANPA to predict exhaust of the NANP. The voluntary, annual survey requests all carriers that use numbering resources to provide forecast data for projected demand for central office codes. Recommendation of the North American Numbering Council Concerning the Replacement of the Central Office Code Utilization Survey, at 6 (filed June 30, 1999).

confidentiality of utilization and forecast information. See Notice at ¶ 78.

The Commission can strike a proper balance between accuracy and efficiency by requiring the most stringent reporting for the top 100 MSAs, where jeopardy is most likely.⁹ Competition has emerged faster in the more densely populated top 100 MSAs, and consequently, there has been greater demand for numbers in these areas.

Specifically, in the top 100 MSAs, the Commission should require quarterly reporting. Utilization calculations and reporting should be performed at the rate center level. Reporting should be provided at the thousands-block level in areas where number pooling has been implemented. Outside the top 100 MSAs, however, reporting should be required on a more infrequent basis, such as semi-annually or annually.

Additionally, the NANPA should be given sufficient authority and flexibility in administering these reporting requirements to permit adjustments in NPAs in jeopardy of exhaust. In such cases, NANPA may find that more frequent and detailed reports are necessary to prevent carriers from warehousing numbers.

Finally, the NANPA should conduct audits on a "for cause" basis rather than conduct regularly scheduled or random audits.

⁹ As mentioned, to the extent that the Commission requires the NANPA to apply the industry pooling guidelines in the top 100 MSAs, further reporting requirements are unnecessary.

Audits should be used on a narrowly targeted basis as a tool to identify inefficiencies. The audits should be performed by the NANPA and the "for cause" standard should be developed and established by the industry, along with the NANPA, given that the NANPA will be responsible for collection of utilization and forecast data. Additionally, the NANPA also should have the authority to conduct audits more frequently in NPAs nearing exhaust. In the event a carrier objects to the results of an audit, Commission review must be available.

VI. THE COMMISSION SHOULD NOT REQUIRE CARRIERS TO PAY FOR NUMBERING RESOURCES.

The Commission recognizes that this proceeding should address all available options to adopt more efficient means of distributing telephone numbers, and therefore, has sought comment on whether to adopt a market based approach to numbering allocation. See Notice at ¶ 225. While market based approaches are generally preferable to regulatory mandates, selling essential inputs, such as telephone numbers, could have the significant unintended consequence of giving incumbents the opportunity to engage in predation.¹⁰ Specifically, the price of out-bidding competitors for numbers may be less than the costs associated with lost market share over time for an ILEC. While

¹⁰ See Stephen Breyer, Regulation And Its Reform at 274 (1982) (explaining possible incentive of participants in "marketable rights" scheme, such as the Notice suggests here, to monopolize a scarce resource).

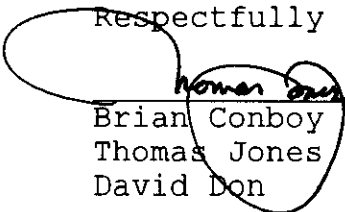
the Commission could obviously attempt to regulate such conduct, attempts to regulate auctions have been unsuccessful in the past.¹¹ In any event, the mechanisms discussed above appear to be fully adequate to address the existing problems in the number administration regime. Given the potential downside with auctioning numbers, the Commission should resist implementing a plan that would include the sale of telephone numbers.

¹¹ The Commission previously attempted to balance policy objectives in a market based auction system when it conducted the PCS C-Block auction. In that auction, the FCC used its regulatory authority to attempt to achieve legitimate policy objectives -- ensuring access to scarce spectrum by small businesses and minorities. No matter how well intentioned, however, the rules excessively interfered with the free flowing nature of a market based auction process. As a result, much of the spectrum reserved for this group of licensees remains under-utilized today. Similar results could occur if the Commission auctioned telephone numbers in a process that also attempted to preserve special access for small carriers to limited numbering resources. In other words, rules intended to balance the forces of an auction market with the Commission's policy objectives to ensure access to numbers by all carriers, may neither conserve numbering resources nor promote competition.

VII. CONCLUSION

The Commission should establish number administration rules in accordance with the recommendations made herein.

Respectfully submitted,



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